

PLANNING BOARD MEETING

TIPP CITY, MIAMI COUNTY, OHIO

August 11, 2009

Meeting

Chairman Mike McFarland called this meeting of the Tipp City Planning Board to order at 7:30 p.m.

Roll Call

Roll call showed the following Board members present: Mike McFarland, John Berbach, Joseph Gibson, and Mark Springer.

Others in attendance: City Planner/Zoning Administrator Matt Spring and Board Secretary Marilyn Fennell. Those signing the register were Rodney Houston, Dave Simpson, Paul Lee, Christopher Schneider, Bill Lee, Judith Lee, Barry Willoughby, Larry Riesser, James Lee, and Joe Bagi. Nancy Bowman of the Dayton Daily News was also in attendance.

Approval of Minutes

July 14, 2009 Meeting

Mr. McFarland **moved to approve the minutes of the July 14, 2009 meeting as presented.** Mr. Berbach seconded the motion. Motion passed 4-0.

Items not on the Agenda

There were no comments on items not on the agenda.

NEW BUSINESS
Deadline Dates

Chairman McFarland announced that the next regularly scheduled Planning Board meeting would be held Tuesday, September 8, 2009. Preliminary Plans, Final Plats and Site Plans must be submitted by 5:00 p.m. on August 17, 2009.

Mrs. Fennell swore in those wishing to speak during the public hearing for the rezoning request for 425 W. Kerr Road.

Barry & Julie Willoughby, 425 W. Kerr Rd, IL 2349 R-1 Zoning-Set Public Hearing for rezoning request

Mr. McFarland **moved to open the public hearing.** Mr. Berbach seconded the motion. Motion passed 4-0.

Mr. Spring explained that the applicant wishes to rezone the property from R-1 (Open Space Residential) to OS (Office Service) The property is a \pm 5 acre parcel located at 425 W. Kerr Road. The Comprehensive Master Development Plan (recommends OS for the proposed area and it lies in planning Area #21. The Plan states that a transitional use area along the south edge adjacent to the Dixie Tara subdivision is designated "Professional Office/Service." Mr. Spring said the adjacent zoning is as follows: North- I-1/POI Light Industrial/Planned Office Industrial (Leshner-Walker Group property), South- R-1AAA Single Family Residential (Miami County zoning), East- I-1/POI (same as the North), and West- A-2 General Agriculture (Miami County zoning).

Mr. Spring said the applicant is the owner of Power Solutions Group which is an electrical engineering consulting firm currently located in Sidney, Ohio. Although it should not be directly considered by the Planning Board, the applicant is considering relocating to this Kerr Road location.

Mr. Spring said in keeping with the recommendation of the

CMDP regarding the designation of a transitional use area along Kerr Road, staff recommended the Planning Board forward a positive recommendation regarding the requested zoning map amendment from R-1 Open Space Residential to OS Office Service to City Council for the property located at 425 W. Kerr Road. He said Mr. Willoughby was present to answer any questions by the Board.

Mr. Berbach asked if this was the property that had been considered for a lot split a while back. Mr. Springer said that was correct. Mr. Springer asked if neighboring property owners had been notified and were there any comments received. Mr. Springer said he had received none and Mrs. Fennell had not received any.

Mr. Rodney Houston, 5650 David Drive, asked what uses were permitted in the OS zoning. Mr. Springer read the list of permitted uses as presented in the staff report plus the special uses listed in the code. Mr. Houston said the property has been an eyesore for 20 years. He said he had met the new owner of the property and he had no problem with the business use proposed but it sounded like if the current owner left, it could be a number of other type businesses such as a McDonald's restaurant. Mr. Springer a restaurant would be considered a Special Use. Mr. Springer reminded the Board that a rezoning should be reviewed at the property level rather than the theoretical use that is proposed. He stated the Board before Mr. Houston is a fairly experienced Board and they are aware of rezoning of a property runs with a property not with any specific owner. If the rezoning is approved by City Council, the new owner could sell the property the next day and the zoning would remain. Mr. Springer said any site plan or a special use request would be reviewed by Planning Board.

Mr. Springer said under the special use of retail and service, those uses would be entirely contained within a structure with a primary permitted use in that district. So a restaurant would have to be within a building with a permitted use. Mr. Springer said a McDonald's would be in a Highway Service district along the freeway. Mr. Houston said he was looking forward to the property being improved but he hoped the applicant didn't decide to sell it soon.

Mr. Gibson asked if the applicant had any comments on the concerns raised. Mr. Willoughby said he plans to use it for his power engineering business firm and would do his best to keep it nice and stay in Tipp City.

There being no further comments Mr. McFarland asked for a motion to close the public hearing. Mr. Berbach **moved to close the public hearing**. Mr. Springer seconded the motion. Motion passed 4-0.

Mr. Springer **moved to send a positive recommendation to City Council for the zoning map amendment for 425 W. Kerr Road from R-1 to OS**. Mr. Berbach seconded the motion. The motion passed 4-0.

Tipp City Seniors,
304 N. Hyatt ST.,
Pt IL 1841, OS
Zoning-Special

Mr. Springer said the applicant is seeking a Special Use permit for the utilization of the structure located at 304 N. Hyatt for a Community Center for the Tipp City Seniors. The OS (Office Service) zoning district lists community centers as a Special Use. Mr. Springer

Use Request

read thru the general requirements for this use:

- 1) Is it in fact a special use as established under the provision of Section 154.040 through 154.061 for the zoning district involved.

Per Code §154.047(B)(2)(k), it is a Special Use.

- 2) Will be harmonious with and in accordance with the general objectives, or with any specific objectives of the Zoning Code.

Utilization of the subject property for use as a Community Center is in substantial accordance with the general objectives of the Zoning Code.

- 3) (a) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity that such use will not change the essential character of the same area.

No exterior changes proposed at this time.

(b) Structures to be constructed, reconstructed or altered pursuant to special uses in residential districts, shall, whenever practicable, have the exterior appearance of residential buildings of the type otherwise permitted and shall have suitable landscaping, screen planting and fencing wherever deemed necessary by the Planning Board.

The proposed use would not be in a residentially zoned district.

- 4) Will not be hazardous or disturbing to existing or future neighboring uses.

It is the opinion of staff that the proposed Community Center and its associated activities would not be hazardous or disturbing to existing or future neighboring uses.

- 5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service.

It is the opinion of staff that the proposed Community Center would be adequately served by existing public facilities.

- 6) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.

It is the opinion of staff that the proposed Community Center would not create excessive additional requirements for public facilities and services and would not be detrimental to the

economic welfare of the community.

- 7) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.

The applicant has provided a quarterly report that indicates that the Tipp City Seniors participate in various activities and social events including luncheons, medical checks, crafts, cards, etc. In general, the best attended events are the luncheons which average approximately 49 attendees (see attachment "C").

Based upon the general slate of activities of the Tipp City Seniors, it is the opinion of staff that the proposed use would not be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.

- 8) Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.

The property includes an existing off-street parking area and vehicular approaches that will not be modified as a part of this application.

- 9) Will not result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance.

The application does not contain any proposal for site plan review and/or any exterior modifications.

Mr. Spring continued with the Specific Requirements under Code §154.122(B)(12) which states:

Churches, libraries, community and recreation centers.

- a. Minimum lot area shall be 1 acre.

The lot is 1.00 acres in area

- b. All sites shall have access only from an arterial or collector street or shall provide access in a manner that does not cause heavy traffic on residential streets.

The access to the site is from N. Hyatt Street. N. Hyatt Street is denoted as a minor arterial on the Tipp City Thoroughfare Plan.

- c. All structures and active outdoor recreation uses shall be setback a minimum of 50 feet from any residential property; however, any outdoor recreation area with night lighting shall be setback 100 feet from any residential property.

The property to the west is zoned R-1C – Urban Residential and is ±140' from the proposed Community Center building.

The parcel to the south is zoned R-2 Urban Residential is $\pm 20'$ from the proposed Community Center building. This parcel is the location of the Hyattsville Cemetery.

The nearest residential structure to the south of the Community Center building is $\pm 260'$ distant. The applicant has indicated that there will be no outdoor recreation area.

Staff notes that the existing structure does not meet the minimum 50' setback from the residentially zoned property to the south (Hyattsville Cemetery). Code §154.122 states:

The Planning Board shall be authorized to waive or modify certain requirements as necessary to achieve compatible development with adjacent land areas as well as in the interest of the community in general.

- d. Parking spaces for church buses shall be located as far distance from any adjacent residential property line as possible. A minimum of 50 feet shall be required in any case.

Church buses will not be parked on site.

Mr. Spring continued with the off-street parking requirements for this Special Use. Community Centers- one space per 250 square feet of gross floor area, plus 1 space per employee on the largest work shift. The structure contains 3,561 square feet of gross floor area and utilizes up to 10 volunteers (employees) during various events. Therefore it would require 25 off-street parking spaces ($3,561 \text{ sq ft} \div 142 = 25$). Code also requires 1 handicapped accessible parking space be provided for 25-50 total spaces. Mr. Spring said the site does provide a paved and lighted non-conforming off-street parking area that includes 29 standard parking spaces and one handicapped space. Thus the current site meets the off-street parking requirements of code.

Mr. Spring said staff recommended approval of a Special Use Permit for the Tipp City Seniors Community Center located at 304 N. Hyatt Street with the following conditions:

1. The Planning Board grants a "Special Use" for the proposed Community Center.
2. The Planning Board waives the minimum 50' setback from the residentially zoned property to the south (Hyattsville Cemetery).
3. That the applicant would obtain an approved Zoning Occupancy/Change of Use Permit prior to utilization of the structure for the Tipp City Seniors (application and \$40 fee required).
4. The applicant must obtain authorization/approval from the Planning Board for any proposed exterior modifications to the site plan prior to the construction/undertaking of any such proposed modifications.

Mr. Springer asked why the current parking lot was considered non-conforming. Mr. Spring said the spaces are not 10'x 20', they are

Old Business

Aaron Lee,
Buckeye Distillery,
130 W. Plum
Street, IL 642, 643
& Pt ILs 644, 645,
249, & 256-I-1D/LD
Zoning

10' x 16' and the drive aisle has to be a minimum of 24' for 2-way traffic and it is actually 26' wide. Mr. Gibson asked what use to be in the building. Mr. McFarland said it use to be doctors' offices. Mr. Springer said it is still owned by Med-Terra which is part of UVMC.

Mr. McFarland asked for comments or questions. Mr. Berbach said he thought the use would be harmonious to the vicinity and it would not be any disruption to the area and he would be in favor of this use. Mr. Springer thought it was a good reuse of the building.

Mr. Springer **moved to approve the Special Use for 304 N. Hyatt Street with the staff recommendations including the waiver of the 50' setback from the Hyattsville Cemetery (R-2 zoning).** Mr. Gibson seconded the motion. Motion passed 4-0.

Mr. McFarland asked the applicant, Mr. Bill Lee, what was going to happen with the old building. Mr. Lee said they have a potential buyer for that building, but there has been no final financial deal on the Hyatt Street property. This newer property certainly offers more off-street parking and they are looking forward to the new building. There will need to be some interior remodeling also.

Mr. McFarland **moved to remove the matter from the table.** Mr. Berbach seconded the motion. Motion passed 4-0.

Mr. Springer said the applicant is seeking Planning Board approval for utilization of the property at 130 W. Plum St. for an alcohol distillery (Buckeye Distillery) and a fire/water damage restoration service (Servpro). The building contains a total area of 4,500 sq. feet. The Distillery would occupy 1,370 sq. ft. and Servpro would occupy the balance of 3,130 sq. ft. On July 14, 2009 this matter was tabled by the Planning Board to allow for public notification of nearby property owners and consideration of enforcement methods for the Special Use permit, if issued. Staff notified the properties within 200 feet and a legal ad was placed in the Troy Daily News on July 29, 2009 indicating the proposed Special Use permit. There was an explanatory letter sent to property owners and tenants within 200 feet of 130 W. Plum Street. There was also an article in the Dayton Daily News Neighbor's section on August 6, 2009. Only two comments had been received at the time of writing of the staff report. Mr. Springer read those comments.

- 1) 7/28/09 Linda Springer, 119 W. Walnut St.-Totally against the distillery. Has children and does not want alcohol production around them. Concerned about odors. Mentioned the Cincinnati distillery and associated odor. Worried that a distillery would promote break-ins.
- 2) May Clingan, 23 Bowman: Against the distillery. As a Christian, she felt that it was against what God wanted. She urged me to oppose the distillery. She quoted Habakkuk 2:15... Woe unto him that giveth his neighbour drink, that putteth thy bottle to him and makest him drunken also, that thou mayest look on their nakedness!

Subsequent to the writing of the staff report, Mr. Springer said he received a third call, August 10, 2009 from Rick Stratton, 129 W. Plum Street. He was also against the distillery and was concerned about potential of fires and explosions with the presence of alcohol. He was

against the distillery in this location due to its proximity to residential homes. He did feel it was a good use but it would be better located elsewhere. He had concerns about storage of products as it is aged.

Mr. Spring reminded the Board that the Servpro operation is a permitted use in this Light Industrial zoning district and can be approved administratively with a Zoning Occupancy/Change of Use Permit.

Mr. Spring said regarding the distillery, the applicant has indicated he will be producing spirituous liquor for human consumption at the site. The distilling operation would produce approximately 50 gallons of alcohol per batch with several batches in various stages of the distillation process on the site. The alcohol would be produced, fermented, distilled, aged, bottled and labeled from this location. The alcohol produced would be similar to flavored vodka. Batches greater than 21% alcohol content would be distributed regionally through State of Ohio authorized Liquor Control retail sites. Batches less than 21% alcohol content would be marketed through local distributors such as Heidelberg Distributing. No retail sales will take place on the site.

Mr. Spring continued that deliveries and distribution would be by truck, with smaller box trucks expected rather than semi trucks.

He said the applicant has indicated that a boiler is used for the distillation process with no pressure in it. The boiler is open, so pressure build-up does not happen. There are no toxic or volatile substances discharged into the atmosphere or sewer system from the distillation process. The applicant has also indicated he has received all necessary federal and state permits to begin production.

Mr. Spring gave the permitted Special Uses within the I-1D zoning district in his report. An alcohol distillery is not listed but code does allow other types of Special Uses that are determined by the Planning Board to be of the same general character as the permitted uses. Those other uses are found not to be obnoxious, unhealthful or offensive by reason of the potential emission or transmission of noise, vibration, smoke, dust, glare or heat. Planning Board may seek expert advice on what conditions should be imposed on a particular operation to carry out the purposes of this zone with that cost to be borne by the applicant. Therefore Planning Board should make a determination as to whether an alcohol distillery is of the same general character as the permitted uses. Mr. Spring said it was his opinion that an alcohol distillery is of the same general character as found in Code §154.054(B)(1)(i) under Manufacturing.

Mr. Spring continued that if the Board did find it a permissible use then the General Requirements need to be looked at. Requirements 1-9 were listed in his report and the answers to those requirements as follows:

- 1) It is in fact a special use as established under the provision of Section 154.040 through 154.061 for the zoning district involved.

Per Code §154.054(B)(2)(a) noted above.

- 2) Will be harmonious with and in accordance with the general objectives, or with any specific objectives of

the Zoning Code.

Manufacturing within a light-industrial zoning district is in accordance with the general objectives of the Zoning Code.

- 3) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity that such use will not change the essential character of the same area.

No exterior changes proposed at this time.

(b) Structures to be constructed, reconstructed or altered pursuant to special uses in residential districts, shall, whenever practicable, have the exterior appearance of residential buildings of the type otherwise permitted and shall have suitable landscaping, screen planting and fencing wherever deemed necessary by the Planning Board.

The proposed use would not be in a residentially zoned district

- 4) Will not be hazardous or disturbing to existing or future neighboring uses.
As stated above, the applicant has indicated that a boiler is used for the distillation process; however there is no pressure in it. The boiler is open so pressure build-up does not happen. The applicant has also indicated that no toxic or volatile substances would be discharged into the atmosphere or sewer system.

Due to the presence of flammable alcohol on site, the Tipp City Fire Chief has requested that a fire extinguisher be installed on-site.

- 5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service.

It is the opinion of staff that the proposed distillery would be adequately served by existing public facilities.

- 6) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.

It is the opinion of staff that the proposed distillery would not create excessive additional requirements for public facilities and services and would not be detrimental to the economic welfare of the community.

- 7) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.

The applicant has indicated that the operation of the distillery will not be detrimental by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.

The applicant has also indicated that an air filtration system will be installed to mitigate any specific odors that are generated through the distillation process.

In addition, the applicant has provided three (3) correspondences from various municipalities with similarly sized distilleries indicating that no complaints have been received regarding odors.

The cities noted are:

**Cincinnati, OH Woodstone Distillery
Madison, NC Piedmont Distillers
Americus, GA Thirteenth Colony Distillery**

- 8) Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.

The property includes an existing nonconforming off-street parking area and vehicular approaches that will not be modified as a part of this application.

- 9) Will not result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance.

The application does not contain any proposal for site plan review and/or any exterior modifications.

Mr. Spring continued with the Special Requirements as follows:

- a. The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, its size layout and its relation to street giving access to it shall be such that vehicular traffic to and from the use will not be more hazardous than the normal traffic of the district, both at the time and as the same may be expected to increase with increasing development of the municipality taking into account vehicular turning movements in relation to routes of traffic flow, relation to street intersections, sight distances, and relation to pedestrian traffic.

Staff notes that the applicant has indicated that the distilling operation will be relatively small, and that deliveries and distribution of the materials and products would be by truck, with smaller box trucks expected rather than semi trucks.

- b. The nature, location, size, and site layout of the use shall be such that it will be a harmonious part of the business or industrial district in which it is situated, taking into account prevailing shopping habits, convenience of access by perspective patrons, the physical and economic relationships of one type of use to another, and characteristic groupings of uses in a commercial or industrial district.

Staff notes that the applicant has not proposed any changes to the exterior layout of the structure, with the underlying industrial zoning district in existence since at least 1973.

Mr. Spring continued with some revised parking considerations. The July 14, 2009 staff report noted a requirement for 13 off-street parking spaces for both businesses. It was reported that there were 13 spaces available to accommodate that requirement. Mr. Spring said he would like to present some modifications and additional information not noted previously.

The analysis that the existing nonconforming off-street parking area could accommodate 13 vehicles did not depict an accurate analysis of the existing conditions on-site. Due to the configuration of the existing structure, the width of the right-of-way (New Street), the existence of various garage doors and man-doors on the eastern façade of the structure, and the standard requirement of a 10' x 20' parking space, 130 W. Plum Street can actually adequately accommodate six (6) vehicles in the existing paved nonconforming off-street parking area abutting New Street.

It is staff's position that any additional (greater than six (6) spaces) off-street parking required by the Planning Board would be required to meet current Code requirements for surfacing, lighting, landscaping, storm water detention, etc.

The required number of off-street parking spaces is based upon Code §154.078 "Number of Parking Spaces Required". Staff notes that the distillery (Buckeye Distillery) and the fire/flood restoration service (ServPro) are not specifically mentioned as uses within Code. Therefore, staff's analysis of the required number of parking spaces is based upon a best estimate of where the proposed uses would fit in the existing Code.

One methodology is to utilize the North American Industry Classification System (NAICS – formerly SIC) to categorize uses. Businesses self-classify based upon a progressive 2 to 6 digit system, with the 2-digit classifications representing broad categories, growing progressively more specific up to the full 6-digit classification.

ServPro is not specifically categorized by the NAICS. In other words, the NAICS does not provide a category that includes a business that remediates fire and flood damage, including cleaning and storage of household furniture at the business site. A review of numerous ServPro websites notes that the business is generally categorized in one of two ways as:

1. 561720 – Building cleaning services, interior, janitorial, cleaning homes, deodorizing services, janitorial services
2. 236118 – Fire and flood restoration, single family or multifamily building, general contractors

Therefore based upon the NAICS classifications, the off-street parking requirements can be revised from the July 14, 2009 staff report as follows:

ServPro Based upon Janitorial

Proposed Use – Janitorial Service → Business and cleaning services

Per §154.078(E)(10)

Business and cleaning services: 1 space for every 300 square feet of sales and office area, plus 1 space for every employee on the largest work shift, plus 1 space for every company or service vehicle regularly stored on the premises.

The applicant has indicated that ServPro will occupy 525 square feet of sales and office area, utilize four (4) employees on the largest work shift, and store two (2) vehicles on the premises. Therefore, the proposed ServPro use requires 8 total off-street parking spaces ($525 \div 300 = 1.75 \approx 2$) + (4) + (2) = 8. In order to explain the breakdown of the various functions of Servpro, the applicant has provided a detailed breakdown of the floor plan and associated business activities (see attachment “B”)

OR

ServPro Based upon Residential Remodelers

Proposed Use – Residential Remodelers → Construction trades and contractor offices and industrial craft shops

Per §154.078(F)(1)

Construction trades and contractor offices and industrial craft shops: 1 space for every 300 square feet of floor area, plus 1 space for every business vehicle.

The applicant has indicated that ServPro will occupy 2,994 square feet of floor area and store two (2) vehicles on the premises. Therefore, the proposed ServPro use requires 12 total off-street parking spaces ($2,994 \div 300 = 9.98 \approx 10$) + (2) = 12

Buckeye Distillery Based upon Manufacturing

Proposed Use – Distillery → Manufacturing, printing and publishing establishments and laundry and dry cleaning plants

Per §154.078(F)(3)

Manufacturing, printing and publishing establishments and laundry and dry cleaning plants: 1 space for each employee on the largest work shift, plus 1 visitor' parking space for every 10,000 square feet of floor area, plus 1 space for every company vehicle regularly stored on the premises.

The applicant has indicated that Buckeye Distillery will employ one (1) employee on the largest work shift, occupy 1,370 square feet of floor area and store zero (0) vehicles on the premises. Therefore, the proposed Buckeye Distillery use requires 1 total off-street parking

spaces $(1 + (1,370 \div 10,000 = 0.137 \approx 0) + (0) = 1$

To justify the usage of only one (1) employee in the calculations for the Buckeye Distillery, the applicant has provided a work schedule (see attachment "K") for the first three (3) months of business. The schedule indicates that the Buckeye Distillery will require one (1) part-time employee that will work approximately six (6) days during the first month of operation and 10 days per month during the second and third months.

By combining the above proposed requirements, the combined uses of ServPro and Buckeye Distillery require a varied number of off-street parking spaces. Additionally, staff notes that the property is within the LD – Legacy Overlay Zoning District. Per Code §154.070(L)(6):

The number of parking spaces required in Code §154.078 shall be reduced by thirty percent (30%) for all new or expanded off-street parking areas.

Mr. Spring provided the following charts in his staff report.

Option	Use/Basis	# of Spaces	Total
1	ServPro/Janitorial	8	8
	Buckeye Distillery/Manufacturing	1	1
	Subtotal	-	9
	Less 30% per Legacy District	2.7	-3
	Total	-	6
2	ServPro/Residential Remodelers	12	12
	Buckeye Distillery/Manufacturing	1	1
	Subtotal	-	13
	Less 30% per Legacy District	3.9	-4
	Total	-	9

Thus using the NAICS Classification system, the proposed ServPro and Buckeye Distillery could be seen to require either 6 or 9 off-street parking spaces rather than the 13 spaces noted in the 7/14/09 staff report.

Mr. Spring continued that the space requirement is somewhat nebulous, therefore difficult to accurately quantify. Occasionally staff has also subdivided uses in within buildings and combined the required off-street parking to form a quasi-hybrid of Code requirements. An example of that would be the Legends project on Donn Davis Way on 11/29/05, uses of a "recreation center" and "miniature golf" were combined.

Mr. Spring said this parking information was presented to the applicant and building owner on July 27, 2009. The owner and applicant have indicated they would like to present an alternative opinion to Planning Board on the requirements and the capacity of the existing off-street parking area. The Planning Board will need to make the final decision on the total number of spaces needed with the combined uses. Mr. Spring said it was staff's opinion that six spaces were required and the capacity of the parking area is six spaces. Any additional spaces required would involve meeting the current Code requirements for surfacing, lighting, landscaping, storm water detention, etc. A separate site plan, photometric diagram, storm water calculations, etc would

need to be approved prior to the required Zoning Occupancy/Change of Use permit.

Mr. Spring continued that at the last meeting, the Board raised concerns regarding potential enforcement of any specific conditions. Staff noted the following sections of Code:

Code §154.121(D) – Procedures for Making Application (for a Special Use)

...The breach of any condition, safeguard, or requirement shall automatically invalidate the permit granted, and shall constitute a violation of this Zoning Code...

Code §154.195 – Office of the Zoning Enforcement Officer

The Zoning Administrator shall administer and enforce this chapter...

Code §154.196(E) – Duties of Zoning Enforcement Officer

Take any other action authorized by this chapter to ensure compliance with or to prevent violation(s) of this chapter. This may include the issuance of and action on zoning and certificate of occupancy permits and such similar administrative duties as are permissible under the law.

Code §154.199(E) – Responsibilities of the Planning Board

Review all special uses as identified in the respective zoning districts according to provisions and criteria stated in §§ 154.120 through 154.122.

Based upon these Sections of Code, it is the duty of the Zoning Enforcement Officer to administer and enforce the Zoning Code and to take action to ensure compliance with the requirements of the Zoning Code. Further, it is the responsibility of the Planning Board to review Special Uses. Accordingly, the Zoning Enforcement Officer shall bring before the Planning Board for review, any bona fide breach of the conditions, safeguards, or requirements of this (or any) Special Use Permit for Planning Board review. It shall then be a decision of the Planning Board as to ascertain the accuracy and relevancy of any such claims of breach of the terms and conditions of the Special Use Permit, and to set forth a finding thereon. Since current Tipp City Code delineates enforcement proceedings for alleged violations of a Special Use Permit, it would not be necessary to note them as "Conditions of Approval" in any motion for approval of said Permit.

Mr. Spring stated if the Board finds the number of required off-street parking spaces is more than what is available, a site plan delineating the expansion of the off-street parking area and compliance with current Code requirements must be presented. He then concluded his report with Staff recommendation for approval of this Special Use with the following conditions:

If the Planning Board desires to approve the requested Special Use with no more than six (6) off-street parking spaces, the following are recommended as conditions of said approval:

1. The Planning Board finds the an alcohol distillery acceptable and of the same general character as the other permitted uses

within the I-1D Zoning District and grants a "Special Use" for the same.

2. The Planning Board finds that the combined uses of ServPro and Buckeye Distillery require ____ off-street parking spaces and that the current capacity of the nonconforming off-street parking area meets or exceeds this requirement with six (6) existing spaces.
3. The applicant will obtain and maintain all required permits/authorizations for the operation of the distillery (federal, state, local, etc.).
4. That the applicant shall install an on-site fire extinguisher appropriate for suppression fires caused by the combustion of alcohol.
5. That the applicant would obtain an approved Zoning Occupancy/Change of Use Permit prior to utilization of the structure for ServPro and/or Buckeye Distillery (application and \$40 fee required).
6. The applicant must obtain authorization/approval from the Planning Board for any proposed exterior modifications to the site plan prior to the construction/undertaking of any such proposed modifications.

Mr. McFarland asked if there were any questions of staff and then he said he would open it for discussion from the audience. All are to come forward to the podium and state their name for the record after being recognized. Mr. Springer asked Mr. Spring for the permitted uses for that zoning district. Mr. Spring read the following uses:

- Any use whose principal function is basic research, design and/or pilot or experimental product development or technical training.
- Office buildings of an executive or of an administrative nature or incidental to other permitted uses.
- Sales offices and retail sales incidental to other permitted uses.
- Business and industrial service facilities.
- Laboratories - experimental, film, testing, research or engineering.
- Printing, publishing, binding and typesetting plants.
- Warehouses and/or distribution firms.
- Wholesale sales facilities.
- The manufacture, compounding, processing, packaging or treatment of such products as, but not limited to: bakery goods, business machinery, candy, clocks and toys, cosmetics, electrical and electronic products, components and equipment, food products, hardware and cutlery, and pharmaceuticals.
- The manufacture, compounding, assembling or treatment of articles or merchandise from previously prepared materials such as, but not limited to: bone, canvas, cellophane cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, paper, plastics, precious or semiprecious metals or stone, sheet metal (excluding large stampings, such as automobile fenders or bodies) shell, textiles, tobacco, wax, wire, wood, (excluding saw and planing mills), and yarns.
- Medical, dental, optical, manufacturing.
- The manufacture of pottery and figurines or other similar ceramic products using only previously pulverized clay, and

- kilns fired only by electricity or gas.
- The manufacture and repair of electric and neon signs.
- Light sheet metal products, including heating and ventilating equipment, cornices or eaves.
- Tool, die, gauge, and machine shops.
- General retail sales and services uses.
- Business and other professional offices, including but not limited to legal offices, marketing and advertising agencies, consulting firms and insurance agencies.
- Banks and financial institutions.
- Grocery stores.
- Barber and beauty shops.
- Medical and other health services.
- Engineering and architectural services.
- Nonprofit professional, charitable, service and labor organizations.
- Residential uses provided they are part of a mixed-use building, and such uses shall be located on an upper floor (no ground floor residential use).

Mr. Springer said those are all permitted uses that would not require Planning Board approval. Mr. Spring said that was correct. Mr. Gibson asked if the applicant had received the six conditions listed on page 11 of the staff report. Mr. Spring said he was informed of them and he had also received a copy of the staff report prior to the meeting and there have been numerous conversations the last 6 weeks.

Mr. McFarland asked for comments and questions of the audience. Mr. Paul Lee, 152 W. Franklin came forward. He said he had a discussion with Mr. Spring regarding the parking required. At the last meeting the number was 19, reduced to 13 and now they only need 6. He said he appreciated the due diligence to meet code but he didn't understand why the reduction. He said he didn't know how 2 businesses could go into one building and the required number of spaces is less than what was presented last month.

Mr. McFarland also asked if there was a non-conforming gravel lot to the west of the building. Mr. Spring said there was. Mr. Spring said he would he do his best to explain his report. He said last month when he was working on the requirements there was nothing in City Code for fire restoration businesses, so he based it on a specialty retail business, §154.078(E)(9) and that that included personal services and retail stores which this business is not. Personal services are defined as nail salons, barbershops, services to people in other codes. That is one space for every 200 sq. ft of gross floor area which equaled 15 spaces for ServPro. He said he tried to explain carefully this month why that did not fit. He understood it is a significant difference but he felt the business was not a specialty retail, a specialty food store, or personal service or commercial center. In trying to find a correct category he went to an industry standard, the North American Industry Classification System,(NAICS). Even that system does not list exactly what ServPro does. They designate themselves to NAICS as a janitorial service or a residential remodeler. That category bases it on every 300 sq. ft of office/sales area plus one space for every employee on the largest work shift plus one space for every company vehicles stored on the premises. He felt that seemed closer as it fits the janitorial side of the

business. The other description as a residential remodeler, is based on one space for every 300 sq. ft of gross floor area, plus one space for every business vehicle. Those are the two ways it can be looked at thru the NAICS. A distillery could be thought of a third way, theoretically it could be thought of as a wholesaler. So Buckeye Distillery could be considered a wholesaler. He said he felt it was a fair fit but maybe not a perfect fit and he was not trying to reduce it purposely. The Board has the prerogative to look at in any way they see fit. Mr. Spring added that he had said last month that the distillery was going to use 4 employees. The applicant corrected that information and said there would be one part-time employee and provided a work schedule for the first 3 months of operation. Mr. Spring said he welcomed any other questions that Mr. Lee had.

Mr. P. Lee said he was pleased with the use of the building. He said he comes to the meeting when there are parking issues as he has a lot at stake. He just wanted a better explanation and if the formula is accurate and fits their business, then he was happy for them.

Mr. Berbach said he understood what Mr. P. Lee was saying and he thought Mr. Spring had done a good job at explaining it. Mr. Gibson wanted to know how Mr. Lee's position on the distillery. Mr. P. Lee said he lives within the proximity of the building and he thought amount of product was so much less than what the distillery in Cincinnati produces that this smell should not be an issue. He said he welcomes businesses to come to Tipp City. He said Zoning has applied rules to his business and he wanted it to be even across the board. Mr. Springer said there is one set of rules but this business does not fit like a beauty shop states there are "x" amount of spaces needed per square feet, etc. Mr. Springer said we went thru the math when Mr. Lee presented his building and there is no "funny" math going on with this case. He said he would classify the ServPro business as janitorial business. Mr. P. Lee asked how the warehouse space comes into play with the number of required parking spaces. Mr. Spring said there was 525 square feet of office space and 544 square feet of work area and 1925 sq. ft of storage and warehouse. Customers' belongings before and after restoration, two company vehicles and equipment would be in the warehouse area. Mr. Spring said a janitorial classification is based on the square footage of the sales/office area and the number of employees and business vehicles.

Mr. P. Lee asked if that other space ever came into play in other businesses. Mr. Spring referred to his July report. He said specialty retail specifically only deals with square footage, no employees are considered at all. Different uses use different determination factors. Mr. P. Lee said he felt Mr. Spring had done a good job.

Mr. Springer asked what happens when the number of employees increases. Mr. Spring said if it is approved at 6 spaces then it becomes non-conforming, there would not be a review. The City has never done that. Mr. McFarland mentioned there would be the non-conforming graveled area that Kruse Hardware used to park semis on. If the business grew, a car could park there. Mr. McFarland said it would be difficult to weigh a decision based on future employment numbers.

Mr. Berbach said he was thinking back to all the work done with City Council on the Legacy District. This is a old area of City that we are trying to bring back and make good use of the buildings.

Rick Stratton, 129 W. Plum came forward and expressed his concerns. He was concerned about the number of vats and if they were open-air. He wondered about a hand-held extinguisher or a water system. The time frame from vat to vat was another question. He understood it took 90 days for the aging process and asked if a boiler with an open flame is being used. That could create an explosion and how much of an area would be taken out if there was an explosion. He said he lived directly across the street from 130 W. Plum. He agreed with Mr. Paul Lee that Tipp does need new business. He didn't believe there was enough apron to accommodate 28' box trucks without taking out the cars parked in front of 136 W. Plum and west of that.

Mr. McFarland said he recommended at the previous meeting that 2 fire extinguishers be required. He said Fire Chief Steve Kessler was present to address some concerns. Chief Steve Kessler said fire extinguishers are based on the size of the room. In listening to the testimony fire extinguishers are required for every 75 sq. ft. so there will be several required to meet code. There is nothing specifically in code that addresses a distillery. Mr. McFarland said Mr. Stratton had a question about the explosion factor. Chief Kessler said alcohol does burn and can explode. The alcohol would have to be at a certain percentage to burn. He explained alcohol is a polar solvent, and there is a foam carried on the first two fire engines to respond. Mr. Berbach asked if it had to be under pressure to explode. Chief Kessler said it would have to be confined to some extent but if it is in a building, the gases could confine it enough; there could possibly be an explosion.

Mr. McFarland asked Mr. Aaron Lee to come forward and answer some of the questions raised. Mr. A. Lee said the product would be in closed containers, no evaporation or fumes coming out of them, no build-up of fumes. The still, itself, will be heated with electric which will be contained inside the still. No open flame. Mr. McFarland asked about the ventilation system. Mr. A. Lee said there would be a ventilation system to eliminate any odors. Mr. McFarland asked if this all had the federal and state permits required. Mr. A. Lee said that was correct.

Mr. Berbach asked about the 3 communities that Mr. A. Lee had contacted that have a distillery similar to the size that he was proposing. Mr. Berbach said he read there have been no complaints from any of those cities. Mr. A. Lee said he had contacted 4 cities and received replies from 3 and there were no complaints filed with those cities.

Mr. A. Lee said when Mr. Spring had contacted him for the July meeting, he had not realized the importance of parking in Tipp City. After the last meeting, he contacted Mr. Spring and there was discussion and correction of some of the information given to Mr. Spring on the actual number of employees, work schedule, etc. Regarding the odor issues, he has some information he can hand out. Mr. Berbach said he had mentioned a "scrubber" to be used. Mr. A. Lee said he has a hair scrubber and some ozone chains and an activated carbon

system on it. He really didn't see a problem with odor. Mr. Berbach said he wanted the input from neighbors. Mr. Berbach said he thought Mr. Lee had addressed the concerns regarding the odor issue.

Mr. McFarland asked for any other citizens' comments. Mr. James Lee, 19 W. Walnut St. said he welcomes any new business but a concern about Miami County's requirements. Mr. McFarland asked Chief Kessler if he knew of what might be required. Chief Kessler said he thought it will not require a fire suppression system.

Mr. Rick Stratton again asked how many vats will be used. How many vats in how many days will be processed? Mr. A. Lee said there will be four (4) 50-gallon vats. With yeast being used, it takes 2 weeks to ferment 50 gallons. At any one time he would have 200 gallons fermenting and he won't wait more than 2 weeks to distill it. If it does not sell, then he won't be producing it. He won't continue to make it and have a huge volume of alcohol just because he can make it. It will be controlled.

Mr. Springer asked if there was a fire suppression system in the building. Mr. A. Lee said there was not. Mr. Springer asked if he had any concerns that one employee working part-time would be aware of a fire problem. Mr. A. Lee said he was trying to eliminate any fire hazard by not allowing vapors to build up and to prevent any sparks. Mr. Springer asked about the problems of break-ins. He asked if there was a security system in the building. Mr. A. Lee said there is a security system installed.

Mr. Christopher Schneider, 106 W. Plum St. said he welcomed new business into Tipp City but he had a concern there is a church that meets regularly plus it is a one-way street and he was concerned about traffic flow thru there. Mr. McFarland assured Mr. Schneider that traffic flow is something that is considered.

Mr. McFarland asked for Board member's comments, questions, and concerns. Mr. Berbach thanked staff for their notification of the neighbors, the investigation into the parking and said it is a difficult decision. He continued with the information received from other cities that there have been no complaints and that this is the Legacy District in which we are trying to use the older buildings. Mr. Berbach said it appears that 6 off-street parking spaces are required. The system has a scrubber and well ventilated, he didn't think a wet sprinkler system was needed. Mr. Berbach **moved to approve the special use permit for 130 W. Plum Street with the recommendations of 6 off-street parking spaces and the other recommendations in the staff report.** The motion died due to a lack of a second.

Mr. McFarland stated there would be an increase in the traffic. Box trucks of 12'-28' in length might have difficulty in maneuvering the street. He said he was not against businesses being in the building but the traffic does need consideration. He knows it is a small operation and he knows the ServPro business uses vans and they should not be a problem. He asked if the owner of the distillery guarantee that there will only be "x" amount of trucks at certain times? Mr. Berbach said he could only hope that there are other uses in the

Legacy District for businesses, otherwise those old buildings will have no use and we might as well tear them down. At some point we need to look at the off-street parking or parking lots throughout the whole Legacy District. Mr. Springer said the traffic on New Street is challenging. He said the business will grow if he is successful and yes, he will have scrubbers but had concerns about the unknown factor of fire and explosion. He said he was good with the ServPro business.

Mr. Larry Riesser, owner of the building at 130 W. Plum Street, and he stated this building is part of his retirement income and the issues raised makes the building almost unusable. The fact is that Dolly Toy ran semi-trucks up Plum Street without any issues as they were using the building across the way for storage. At one time Dolly Toy used his building for storage with the semi-trucks. Plum Street was rebuilt in 1993 and at that time the new curbs were put in. He said he sees trucks go up the street which is much more than what will be created with this endeavor. He may have an occasional delivery and pick up truck. There is a man with a wood-chipping business across the street and he uses a good size truck which is no bigger than a box truck which was proposed for this issue. He said he disagreed with the increase in traffic issue.

Mr. Gibson said there were more concerns expressed that do not support the issue. Mr. McFarland said the motion died with no second. Mr. Spring noted in the Code, the Planning Board must either approve, approve with conditions, or disapprove the application as presented. Mr. McFarland asked for another motion.

Mr. Springer **moved to deny the Special Use request for 130 W. Plum Street as written in the staff report.** Mr. Gibson seconded the motion. Ayes: Springer and Gibson, Nays: Berbach and McFarland. With the vote being a 2-2 tie, Mr. McFarland said the matter will be an agenda item at the next meeting. Mr. Spring affirmed that statement.

Miscellaneous
City Council
Reports:
8/3/09- Mr. Berbach

Mr. Berbach reported there were no items related to Planning Board at the August 3rd City Council meeting but Council is considering putting leaf-pickup back into the budget.

Board member
comments

Mr. Springer asked the status on Evanston Road and the traffic signal projects. Mr. Spring said the paving should start soon on Evanston. He did not know about the traffic signal project. There were no further comments by the Board members. There being no further business for discussion, Mr. McFarland **moved that the meeting be adjourned.** Mr. Gibson seconded the motion. Chairman McFarland declared the meeting adjourned at 9:27 pm.

Adjournment

Michael McFarland, Planning Board Chairman

Attest: _____
Marilyn Fennell, Board Secretary